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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,120	10/24/2005	Dieter Jablonka	05-444	1191
34704 7590 03/18/2010 BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510				
EXAMINER				
PATTERSON, MARC A				
ART UNIT		PAPER NUMBER		
1794				
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03/18/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/540,120

**Applicant(s)**

JABLONKA ET AL.

**Examiner**

MARC A. PATTERSON

**Art Unit**

1794

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11/16/09.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 28-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

**NEW REJECTIONS**

***Claim Rejections – 35 USC § 103(a)***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 28 and 30 - 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent No. 1511577.

With regard to Claims 28, 30 and 32, German Patent No. 1511577 disclose a process for production of elements from PCM comprising extrusion blowing, therefore extruding, a tube from a synthetic material and filling paraffin, therefore a PCM latent heat storing material having a phase change temperature in the range of 15 to 40 degrees Celsius, into the tube (English Abstract). German Patent No. 1511577 fails to disclose storage of the tube; however, the element is a packaging element (English Abstract); it therefore would have been obvious for one of ordinary skill in the art to have provided for storage, depending on the desired use of the package. German Patent No. 1511577 also fails to disclose a cross section in the range of 3.0 to 7.0 mm. However, because German Patent No. 1511577 discloses a packaging element, it would have been obvious for one of ordinary skill in the art to select a diameter, therefore a cross section, and a length, depending on the desired volume for packaging of the end product.

With regard to Claim 31, the tube disclosed by Falla et al is extruded, as stated above, therefore transported to a cooling zone after it is filled.

3. Claims 29 and 33 - 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent No. 1511577 in view of Frechtmann et al (U.S. Patent No. 2,977,729).

German Patent No. 1511577 discloses a tube that is filled as discussed above. With regard to Claim 29, German Patent No. 1511577 fails to disclose storing the tube coiled up.

Frechtmann et al teach a tube that is filled, comprising a number of linked packages (column 3, lines 21 - 23) for the purpose of obtaining packages that are severable and separate (column 1, lines 15 - 22). One of ordinary skill in the art would therefore have recognized the advantage of providing for the tube of Frechtmann et al in German Patent No. 1511577, which comprises a tube, depending on the desired severability of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a number of linked packages in German Patent No. 1511577 in order to obtain packages that are severable and separate as taught by Frechtmann et al. It would also be obvious for one of ordinary skill in the art to store the tube in any form for which it is capable, including coiled up.

With regard to Claims 33 - 37, Frechtmann et al teach constricting the tube at predetermined locations in order to form tube sections and heat sealing the constrictions, therefore by reciprocating pressing tools (column 3, lines 35 - 51), it would therefore have been obvious for one of ordinary skill in the art to provide for any structure of support for transporting the tube and tools past each other, including counter - revolving endless conveyor belts or wheels.

With regard to Claim 38, Frechtmann et al teach severing of the tube sections, therefore at narrow points, as discussed above, and ends of the tube therefore remain sealed.

With regard to Claim 39, Frechtmann et al fail to teach a granular material comprising the tube sections. However, Frechtmann et al teach the selection of the length of the sections depending on the desired use of the end product (any desired practical length; column 3, lines 17 - 20); it would therefore be obvious for one of ordinary skill in the art, through routine optimization, to determine the length of the sections, therefore whether the sections are granular, depending on the desired end use.

4. Claims 40 - 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent No. 1511577 in view of Frechtmann et al (U.S. Patent No. 2,977,729) and further in view of Katz (U.S. Patent No. 4,759,814).

German Patent No. 1511577 and Frechtmann et al disclose a tube sections as discussed above. With regard to Claims 40 - 45, German Patent No. 1511577 and Frechtmann et al fail to disclose fixing the tube sections to a non - woven fabric by connecting the sections to the fabric in a nip and coating the sections, from an extruder nozzle, with a film.

Katz teaches fixing the tube sections to a non - woven fabric by connecting the sections to the fabric in a nip and coating the sections from an extruder nozzle with a film (column 2, lines 32 - 66) for the purpose of obtaining sections having increased strength (column 1, lines 10 - 28). One of ordinary skill in the art would therefore have recognized the advantage of providing for the fixing of Katz in German Patent No. 1511577 and Frechtmann et al, which comprises tube sections, depending on the desired strength of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for fixing the tube sections to a non - woven

fabric by connecting the sections to the fabric in a nip and coating the sections, from an extruder nozzle, with a film in German Patent No. 1511577 and Frechtmann et al in order to obtain sections having increased strength as taught by Katz.

With regard to Claim 46, it would therefore be obvious for one of ordinary skill in the art to provide for feeding of the tube sections from the hands of an operator, therefore hands formed into a hopper.

#### ANSWERS TO APPLICANT'S ARGUMENTS

5. Applicant's arguments regarding the rejections of the previous Action have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues, on page 10 of the remarks dated September 19 2009, that the claimed particle length provides quick reaction time and easy processing.

However, it is not clear where the criticality of the length, and its relation to quick reaction time and easy processing, is discussed in the original specification.

Applicant also argues, on page 11, that the materials described in the '577 patent, including soft paraffin and hard paraffin, are not PCM materials.

However, paragraphs 0013 and 0037 disclose paraffin as a PCM material.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Marc A Patterson/  
Primary Examiner, Art Unit 1794